

N.D.A.G. Letter to Thompson (Dec. 2, 1985)

December 2, 1985

Mr. Maury C. Thompson
Sioux County State's Attorney
Sioux County Courthouse
Fort Yates, ND 58538

Dear Mr. Thompson:

Thank you for your letter of November 15, 1985, concerning two members of a school board who are employees of that school district.

In *Tarpo v. Bowman Public School District No. 1*, 232 N.W.2d 67 (N.D. 1975), our North Dakota Supreme Court adopted the common law rule as to incompatible offices. The Court concluded that two offices or positions are incompatible where one office has the power of appointment to the other or the power to remove the other. Furthermore, incompatibility exists where there are many potential conflicts of interest between the two such as salary negotiations, supervision, and control of duties and obligations to the public to exercise independent judgment. The specific instance in *Tarpo*, *supra*, involved a teacher who was also a member of the school board. The Court concluded that the facts justified the conclusion that such an arrangement involved incompatible offices.

We believe that the rationale in *Tarpo*, *supra*, is directly applicable to your factual situation. Although a teacher is involved in *Tarpo*, the same rule of law as to determining whether two offices are incompatible is relevant and should be consulted with respect to the two positions described in your letter. Thus, if one finds that these offices or positions are incompatible given the standard as provided us by the Supreme Court in *Tarpo*, *supra*, then the individual could not hold both offices and would have to choose which office he would continue to hold.

Sincerely,

Nicholas J. Spaeth

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